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ATTORNEY FOR PLAINTIFF AND THE CLASS

FILED
CLERK, U.S. DISTRICT COURT
September 15, 2015
CENTRAL DISTRICT OF CALIFORNIA
BY: AK DEPUTY

IN THE SUPERIOR COURT OF CALIFORNIA

SANTA BARBARA COUNTY UNLIMITED-SOUTHERN DIVISION

ANDY JANG, on behalf of himself and others similarly situated,

Plaintiff,

vs.

ASSET CAMPUS HOUSING, INC., PROPERTY SOLUTIONS INTERNATIONAL, INC., ENTRATA, INC.

Defendants.

_______________________________/

Case No. 2:15-CV-01067 JAK (PLAx)

FIRST AMENDED CLASS ACTION COMPLAINT FOR VIOLATION OF CIVIL CODE SECTION 1748.1; DECLARATORY RELIEF, CONVERSION; VIOLATION OF UNFAIR BUSINESS PRACTICES ACT; VIOLATION OF CONSUMER LEGAL REMEDIES ACT

Plaintiff alleges:

1. At all times mentioned in this complaint, Plaintiff ANDY JANG (hereafter “Plaintiff”) was and is a resident of the County of Santa Barbara, State of California.

2. Defendant ASSET CAMPUS HOUSING, INC. (hereafter “ACH”) is a Texas corporation and a property manager of residential rental units in the County of Santa Barbara and elsewhere in California.

3. Defendant PROPERTY SOLUTIONS INTERNATIONAL, INC. (“PSI”) is or

was a Utah corporation and is a third party guarantor for credit payments as defined at Civil Code section 1748.1(d), actively doing business in California and with plaintiff and plaintiffs herein. Defendant ENTRATA, INC. is the successor corporation of PSI and has taken all its liabilities and assets. PSI's counsel has referred to ENTRATA, INC. as PSI's new name. To Plaintiff's understanding, ENTRATA, INC. is now registered with the California Secretary of State, but PSI is no longer listed. These defendants are collectively referred to as PSI hereafter.

4. Plaintiff is informed and believes and based thereon alleges that at all times herein mentioned each of the Defendants herein named, including those named fictitiously, were the agents, employees, representatives, joint or co-venturers of each other in doing the things herein alleged and, in so doing, were acting in the course and scope of that agency, employment, venture or representation and with the permission, consent or ratification of their co-Defendants. As such, the Defendants, and each of them, including those named fictitiously, are jointly and severally liable to Plaintiff. The Defendants are collectively referred to as Defendants, ACH or PSI as appropriate hereafter.

5. ACH and its employees and agents at Isla Vista, Santa Barbara County, California and other California locations entered into a written lease agreements with Plaintiff and others for a residence. In Plaintiff's case, the tenancy was at the Capri Apartments located at 6598 Seville Road, Isla Vista, California. During the terms of such leases, ACH accepted payment from plaintiff and plaintiffs via the use of credit cards by and though PSI or other third party guarantors as defined by 1748.1(d). It also accepted electronic charges which debited consumer's bank accounts, including plaintiff.

6. On each such occasion, plaintiff and others, either using ACH or another retailer, PSI charged and charges a surcharge when a credit card was used. When an electronic charge was debited against plaintiff and other consumer's bank accounts,

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or when the rent was paid by check or cash, no such surcharge was made.

7. The court has jurisdiction over this matter pursuant to Defendants' removal under the Class Action Fairness Act, various provisions of the United States Code.

CLASS ACTION ALLEGATIONS

8. Plaintiff incorporates by reference each of the preceding paragraphs as fully set forth herein.

9. Pursuant to FRCP Rule 23 and California Civil Code section 1781, as applicable, and common law, representative Plaintiff brings this case on his own behalf and on behalf of all persons similarly situated ("Plaintiffs").

10. The class or classes that Plaintiff wishes to represent are composed of Californians subjected to surcharges on credit card payments to Defendants as described in paragraphs 5-6 above.

11. There is a well-defined community of interest in the questions of law and fact involved affecting each Plaintiff class in that the questions of fact are common amongst each Plaintiff class and the questions of law, the law's application, and what remedy is necessary to protect the class are common among the class members. These questions of law and fact predominate over questions that effect only individual class members in that the class members have been dealt with by Defendants in a systematic, routine and closely similar fashion to his own, specifically, that Defendants have made and are making surcharges on payments made with a credit card.

12. There is no plain, speedy or adequate remedy other than by maintenance of this class action, since it appears the surcharge when there is use of a credit card for transactions in a systematic and routine manner are violations of the law other class members are unlikely to seek relief for given the relatively small amount of damages involved and the cost and expense of doing so. Consequently, there would be a failure of justice but for the maintenance of the present class action.

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13. The prosecution of individual remedies by members of each Plaintiff class would tend to establish inconsistent standards of conduct for Defendants and result in the impairment of class members' rights and the disposition of their interests through actions to which they are not parties. It would also result in the unnecessary duplication of effort and expense.

14. Class Requirements:

A. Numerosity: It appears that ACH manages at least 200 rental leases in Santa Barbara County alone, though it manages other properties throughout California. Assuming a very conservative number of its tenants utilized the use of a credit card in making payments sometime during their tenancy, it appears there may well be over 500 class members over a four year period. Moreover, it appears PSI, a large national and international company, routinely and systematically surcharges for all use of credit cards in California and therefore the class size almost certainly is many times multiple to that of ACH tenants alone. From discovery it in fact appears that tens of thousands of credit card using Californians have been surcharged by PSI. Therefore, it appears the Plaintiff class members are so numerous that the individual joinder of all members would be impracticable.

B. Common Questions Predominate: Common questions of law and fact exist as to all members of the Plaintiff classes and those questions clearly predominate over any questions which might affect members individually. These common question of law and fact is whether the surcharges for credit card purchases were legal and, if not, what the proper remedy is.

C. Typicality: As alleged, Plaintiff's claims are typical of the claims of the members of the Plaintiff Classes, his claim and those of the class share the typical issue of the surcharge for use of a credit card.

D. Adequacy: Plaintiff in this action will fairly and adequately

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protect the interests of the members of the Plaintiff Class since Plaintiff possesses no interest which is adverse to the interests of absent class members and since Plaintiff has retained counsel experienced in the prosecution of class actions and residential rental cases.

E. Superiority: A class action is superior to other available means for the fair and efficient adjudication of this controversy since individual joinder of all members would be impracticable. Class action treatment will permit a large number of similarly situated persons to prosecute their common claims in a single forum simultaneously, efficiently and without the unnecessary duplication of effort and expense that numerous individual actions would engender. Furthermore, the expenses and burdens of litigating individual actions would make it difficult or impossible for individual members of the class to redress the wrongs done to them. An important public interest will be served by addressing the matter as a class action, substantial economies to the litigants and to the judicial system will be realized, and the potential for inconsistent or contradictory judgments will be avoided. This is particularly true as to the claims for declaratory and injunctive relief.

F. Ascertainable Class: The classes are ascertainable in that either documents, electronic tape and/or data bases likely exist and can show or can be made to show class membership, or that an adequate sampling method can be created to certify a class and class membership and/or that actual class membership either alone or with a process above will allow class members to identify themselves. It seems likely that account records/ledgers will suffice to adduce class membership exists.

15. Tentative Class Definitions: As such, plaintiff intends to certify a class or classes tentatively defined as follows: all Californians surcharged for use of a credit card by ACH and/or PSI within the last four years. Moreover, separately, each such

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class seeks declaratory and corresponding injunctive relief to prevent such practices in the future.

16. Plaintiff has incurred and, during the pendency of this action will incur expenses for attorney's fees and costs herein. Such attorney's fees and costs are necessary for the prosecution of this action and will result in a benefit to each member of the classes.

FIRST CAUSE OF ACTION

VIOLATION OF CIVIL CODE SECTION 1748.1

17. Plaintiff incorporates by reference each of the preceding paragraphs as fully set forth herein.

18. Plaintiff was and the class were or are residential tenants by and through written leases of ACH, a retailer, or other retailer in California, paying rent and/or other charges with a credit card and surcharged for such use in violation of 1748.1 by and through PSI and thus were damages by violation of that statute.

19. Plaintiff notified ACH of the facts and demanded restitution of the surcharges by certified mail. Both ACH and PSI responded to the demand but did not provide restitution. Therefore, this action is brought under Civil Code section 1748.1(b) and Plaintiff and Plaintiffs demand treble damages for each surcharge.

20. Plaintiffs also seek damages and restitution from PSI to the extent the allegations of Para 19 do not apply, that is, that notice to one retailer or transaction with one retailer is not sufficient to provide the remedy set forth under 1748.1(b) against the guarantor.

21. Plaintiff, on behalf of himself and a class of similarly situated others, also seeks declaratory and injunctive relief, compelling ACH and PSI's compliance Civil Code 1748.1.

22. Plaintiff also asks for attorney's fee per Civil Code 1748.1(b), Code of Civil Procedure 1021.5 and the catalyst, common fund and substantial benefit doctrines.

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WHEREFORE, PLAINTIFF PRAYS AS SET FORTH BELOW.

SECOND CAUSE OF ACTION

DECLARATORY AND INJUNCTIVE RELIEF

23. Plaintiff incorporates by reference each of the preceding paragraphs as fully set forth herein.

24. An actual controversy has arisen and now exists between Plaintiff, Plaintiff class and Defendants concerning their respective rights and duties in that Plaintiffs contend Defendants have routinely and systematically not complied with Civil Code section 1748.1 and Defendants believe they have.

25. Plaintiff and the class desire a judicial determination of their rights and duties, and a declaration as to whether any of the above are invalid and/or which party's interpretation of the law is correct.

26. A judicial declaration is necessary and appropriate at this time and under the circumstances in order that Plaintiffs may ascertain their rights and duties regarding the above and to implement such rights.

27. Plaintiff, on behalf of himself and a class of similarly situated others, requests an order compelling ACH and PSI's compliance with the law as set forth above.

28. Plaintiff also asks for attorney's fee per Code of Civil Procedure 1021.5, the catalyst, common fund and substantial benefit doctrines.

THIRD CAUSE OF ACTION

(CONVERSION)

29. Plaintiffs incorporate by reference each of the preceding paragraphs as fully set forth herein.

30. In all circumstances Plaintiff and Plaintiffs paid money to defendants some or all of which does not belong to defendants and which was required to be returned by defendants.

31. Defendants have taken possession of that money and prevented plaintiffs access

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to it, despite plaintiffs lack of consent.

32. As the legal result of defendants' actions, Plaintiffs have been dispossessed of their money and beneficial interests associated therewith.

33. Defendants knew they had not properly kept Plaintiffs money and did nothing to return it once they knew they had no further right to it. As such, defendants' actions were willful, wanton, malicious and oppressive and were undertaken with an intent to defraud and justify the award of exemplary and punitive damages.

34. Plaintiff also asks for attorney's fee per Code of Civil Procedure 1021.5, the catalyst, common fund and substantial benefit doctrines.

WHEREFORE, PLAINTIFFS PRAY AS SET FORTH BELOW.

FOURTH CAUSE OF ACTION

VIOLATION OF UNFAIR BUSINESS PRACTICES ACT

35. Plaintiff incorporates by reference each of the preceding paragraphs as fully set forth herein.

36. The actions alleged constitute deceptive, unlawful and unfair business practices within the meaning of the Unfair Competition Law, Business and Professions Code section 17200, et seq. (UCL). Such acts were unfair and unlawful as in violation of Civil Code section 1748.1, the CLRA, constitute conversion, are unlawful and unfair as in violation of Federal Trade Commission Rule 5 (substantial consumer injury, not outweighed by any countervailing benefits to consumers or competition, involving injury that consumers could not reasonably have avoided), or immoral, oppressive or unscrupulous as described.

37. Such acts were also deceptive as defined by the UCL since they were asserted to allowed when they are not.

38. As a proximate result of Defendants' practices, Plaintiff has incurred damage by being charged amounts not in accord with Civil Code section 1748.1.

39. Plaintiffs, therefore, seek injunctive relief, as a representative action, necessary

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to prevent the use or employment by Defendants of the practices alleged herein as well as restitution of funds improperly obtained therefrom.

40. Plaintiff also asks for attorney's fee per Code of Civil Procedure 1021.5, the catalyst, common fund and substantial benefit doctrines.

WHEREFORE, PLAINTIFFS PRAY AS SET FORTH BELOW.

FIFTH CAUSE OF ACTION

CONSUMER LEGAL REMEDIES ACT

41. Plaintiff incorporates by reference each of the preceding paragraphs as fully set forth herein.

42. The Consumer Legal Remedies Act (CLRA) proscribes unfair methods of competition and unfair or deceptive acts or practices undertaken by any person in a transaction intended to result, or which results in, the sale of goods or services to any consumer. Plaintiff and Plaintiff on behalf of the class alleges that the charge of a fee of a credit card is a service. As such, Defendants appear to have engaged in the type of transactions foreseen by the CLRA.

43. The surcharge of a credit card violates Civil Code section 1770(a)(5) in that it represents that services have approval which they do not have and/or 1770(a)(14) prohibiting representing a transaction confers rights, remedies or obligations (representing that surcharging credit cards is permissible) which it does not have or involve, or which are prohibited by law per California Civil Code section 1748.1.

44. Plaintiff has suffered damage as a result of the surcharge of his credit card. Per the facts set forth in paragraphs 14A-D above, the requirements of the CLRA are met to represent others per California Civil Code section 1781(a).

45. Additionally, or alternatively, plaintiff seeks injunctive relief either with or without a class prohibiting Defendants from engaging in the practices alleged.

46. Plaintiff sent ACH and PSI, in the manner prescribed by the CLRA, a notice of these violations. No remedy was proffered by ACH nor PSI.

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47. Plaintiff also asks for attorney's fee per Civil Code section 1780(e) and Code of Civil Procedure 1021.5.

WHEREFORE, Plaintiffs PRAY AS SET FORTH BELOW.

PRAYER

WHEREFORE, Plaintiff prays for judgment against each Defendant as follows:

1. Certification of a Class Action per California Civil Code section 382 and 1781(a);
2. An accounting;
3. Statutory damages;
4. Actual Damages;
5. Treble damages per 1748.1(b);
6. Punitive Damages;
7. Restitution;
8. A Declaration of the respective rights and duties of the parties;
9. An Order enjoining the methods, acts or practices alleged;
10. Attorney's fees per Civil Code section 1748.1, Code of Civil Procedure 1021.5, Civil Code section 1780(e), the catalyst, common fund and substantial benefit doctrines as well as costs and expenses of suit; and
11. Such other and further relief as the court deems proper.

August _____, 2015 LAW OFFICE OF RON BOCHNER

BY/s/________________________
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